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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,609	10/29/2003	Wanda J. May	09999-0603.MAY	6858

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/696,609	Applicant(s) MAY, WANDA J.	
	Examiner FREDRICK C. CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 34-56 is/are pending in the application.  
     4a) Of the above claim(s) 38-41, 43-46 and 48-54 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 34-37, 42, 47, 55 and 56 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Applicant's election without traverse of Species IV in the reply filed on 5/2/06 is acknowledged.

Claim 38-41, 43-46, and 48-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/02/06. With regards to the Applicant's remarks, Claim 38 is drawn to Species X (fig. 11A,11B), claim 48 (dependant on claim 39) is drawn to Species III (fig. 5A,5B), and claim 53 drawn to species I (fig. 3A).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 34-37 and 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,483,501 to Eddy in view of U.S. Pat. . 5,680,660 to Johanknecht.

Claims 34, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members are inserted between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure, wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one item therein; and

means 28 for releasably connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly. Eddy discloses a living hinge that is capable of being angularly displaced relative to the first panel (col. 2 lines 27-30), but fails to disclose the free portion extending upwardly or downwardly with respect to said captured portion. Johanknecht discloses a support having a two-way living hinge 28 that is capable of extending a free portion 26 upwardly or downwardly with respect to a captured portion 12 (col. 3 lines 10-15). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ the two way living hinge as taught by Johanknecht in order to have the free end placed in a perpendicular position either above or below the captured portion (col. 3 lines 14-15). With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). With regards to the first and second members being interchangeably operable as said captured and free portion, the holder of Eddy is considered capable of interchangeable operation since the first

member 12 has a plurality of bores 38 along the length that would allow the bar received by the belt loop 28 to be connected with suitable fasteners while the second member is captured between the cushioning object and support structure.

Claims 35-36, Eddy discloses the sundries caddy of claim 34, wherein both of said first and second members are substantially planar.

Claim 37, Eddy discloses the sundries caddy of claim 34, wherein said first and second members are permanently connected to one another at substantially perpendicular angle (fig. 2).

Claim 42, Eddy discloses the sundries caddy of claim 34, wherein said means for connecting said receptacle to said free portion comprise means (22,24) for releasably connecting said receptacle to said free portion (col. 2 lines 35-46).

Claims 47 and 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,483,501 to Eddy in view of U.S. Pat. No. 5,680,660 to Johanknecht, and further in view of U.S. Pat. No 5,946,432 to Ennis et al.

Claim 47, Eddy fails to disclose the releasable connecting means comprising at least one elastic band carried by the receptacle. Ennis discloses a releasable connecting means for a receptacle comprising an elastic band 30 (col. 2 lines 36-45). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ an elastic band as taught by Ennis in order to provide an alternative means to hold the receptacle.

Claims 55-56, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members are inserted between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure, wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one item therein; and

means 28 for releasably connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly. Eddy discloses a living hinge that is capable of being angularly displaced relative to the first panel (col. 2 lines 27-30), but fails to disclose the free portion extending upwardly or downwardly with respect to said captured portion. Johanknecht discloses a support having a two-way living hinge 28 that is capable of extending a free portion 26 upwardly or downwardly with respect to a captured portion 12 (col. 3 lines 10-15). It would have been obvious for one having ordinary skill in the art at the time of the

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invention to employ the two way living hinge as taught by Johanknecht in order to have the free end placed in a perpendicular position either above or below the captured portion (col. 3 lines 14-15). Eddy also fails to disclose the releasable connecting means comprising at least one elastic band carried by the receptacle. Ennis discloses a releasable connecting means for a receptacle comprising an elastic band 30 (col. 2 lines 36-45). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ an elastic band as taught by Ennis in order to provide an alternative means to hold the receptacle. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

### ***Response to Arguments***

Applicant's arguments with respect to claims 34-37, 42, 47 and 55-56 have been considered but are moot in view of the new ground(s) of rejection.

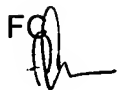
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FC  


  
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